

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

Sec.

1013.1 The independence of the trustee of a voting trust.

1013.2 The irrevocability of the trust.

1013.3 Review and reporting requirements for regulated carriers.

AUTHORITY: 49 U.S.C. 721, 13301(f).

SOURCE: 44 FR 59909, Oct. 17, 1979, unless otherwise noted.

§ 1013.1 The independence of the trustee of a voting trust.

(a) In order to avoid an unlawful control violation, the independent voting trust should be established before a controlling block of voting securities is purchased.

(b) In voting the trustee stock, the trustee should maintain complete independence from the creator of the trust (the settlor).

(c) Neither the trustee, the settlor, nor their respective affiliates should have any officers or board members in common or direct business arrangements, other than the voting trust, that could be construed as creating an indicium of control by the settlor over the trustee.

(d) The trustee should not use the voting power of the trust in any way which would create any dependence or intercorporate relationship between the settlor and the carrier whose corporate securities constitute the corpus of the trust.

(e) The trustee should be entitled to receive cash dividends declared and paid upon the trustee voting stock and turn them over to the settlor. Dividends other than cash should be received and held by the trustee upon the same terms and conditions as the stock which constitutes the corpus of the trust.

(f) If the trustee becomes disqualified because of a violation of the trust agreement or if the trustee resigns, the settlor should appoint a successor trustee within 15 days.

§ 1013.2 The irrevocability of the trust.

(a) The trust and the nomination of the trustee during the term of the trust should be irrevocable.

(b) The trust should remain in effect until certain events, specified in the trust, occur. For example, the trust might remain in effect until (1) all the deposited stock is sold to a person not affiliated with the settlor or (2) the trustee receives a Board decision authorizing the settlor to acquire control of the carrier or authorizing the release of the securities for any reason.

(c) The settlor should not be able to control the events terminating the trust except by filing with this Board an application to control the carrier whose stock is held in trust.

(d) The trust agreement should contain provisions to ensure that no violations of 49 U.S.C. 11343 will result from termination of the trust.

§ 1013.3 Review and reporting requirements for regulated carriers.

(a) Any carrier choosing to utilize a voting trust may voluntarily submit a copy of the voting trust to the Board for review. The Board's staff will give an informal, nonbinding opinion as to whether the voting trust effectively insulates the settlor from any violation of Board policy against unauthorized acquisition of control of a regulated carrier.

(b) Any person who establishes an independent trust for the receipt of the voting stock of carrier must file a copy of the trust, along with any auxiliary or modifying documents, with the Board.

(c) Any carrier required to file a Schedule 13D with the Securities and Exchange Board (17 CFR 240.13d-1) which reports the purchase of 5 percent or more of the registered securities of another I.C.C. regulated carrier (or the listed shares of a company controlling 10 percent or more of the stock of an I.C.C. regulated carrier), must simultaneously file a copy of that schedule with this Board, along with any supplements to that schedule.

(d) Failure to comply with the reporting requirements in paragraphs (b) or (c) of this section will result in denial of the application in which acquisition of control, through the acquisition of the voting stock of another carrier, is sought, unless the applicant shows, by clear and convincing evidence, and the Board finds, that the